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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA, No. CR.S-03-0042 FCD

12 Plaintiff,

13 v.

ORDER RE DEFENDANTS' MOTION
FOR A BILL OF PARTICULARS

14 SHANGO JAJA GREER, et al.,

15 Defendants.
16 _____/

17 On October 12, 2005, this matter came before the undersigned
18 for hearing on defendants' motion for a bill of particulars.¹

19 Attorney Peter Kmeto appeared on behalf of defendant Shango Greer;
20 attorney Jonathan Paul for attorney Jesse Rivera appeared on behalf of
21 defendant Charles White; and attorneys Robert Peters and Jan Karowsky
22 appeared on behalf of defendant Jason Walker. Assistant United States

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25 ¹ A motion for a bill of particulars was originally filed by
26 counsel for defendant Oscar Gonzalez, who has since entered a plea of
guilty. That motion was joined in and/or supplemented by each of the
defendants remaining in this action.

Attorneys R. Steven Lapham, Kenneth Melikian and Philip Ferrari appeared on behalf of the government.

Upon review of the documents filed in support of and in opposition to the motion, as well as consideration of the oral arguments presented, for the reasons set forth below the court denies the defendants' motion.

BACKGROUND

On January 29, 2003, the grand jury returned the indictment in this case. In Count One defendants Greer and White are charged with conducting the affairs of an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c), with the pattern of racketeering activity alleged to have consisted of nine separate racketeering acts set forth in the indictment. In Count Two defendants Greer, Walker and White are charged with conspiring to conduct the affairs of the enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(d). In Count Three defendant White is charged with engaging in violent crime (the murder of Devin Russell) in aid of racketeering activity in violation of 18 U.S.C. § 1959(a)(1) & (2). Finally, in Count Four defendant Greer is charged with committing a violent crime (the murder of Larry Cayton) in aid of racketeering in violation of 18 U.S.C. § 1959(a)(1) & (2).

More specifically, the indictment alleges that these defendants, and their former co-defendants, were members and associates of the Pitch Dark Family, a criminal organization whose members and associates engaged in violence, including murder and

1 attempted murder, and in the distribution of narcotics. The
2 indictment alleges that the Pitch Dark Family operated principally on
3 the west side of Vallejo. The indictment also identifies defendants
4 Greer and Walker as the leaders and the "backbone" of the criminal
5 enterprise. It is alleged that Greer and Walker participated in the
6 management and operation of the enterprise, directing the other
7 members and associates in carrying out unlawful activities in
8 furtherance of the operation of the enterprise.

9 Discovery in this case has been extensive. This court
10 issued discovery orders on November 24, 2004 and May 16, 2005. As of
11 October 18, 2004, the government represented that it had produced for
12 the defendants' review over 12,000 pages of discovery including police
13 reports, FBI 302's, photographs, transcripts of state court
14 proceedings and the grand jury transcripts along with a multitude of
15 video and audio tape recordings. Discovery has been ongoing and
16 additional discovery has been provided since those representations
17 were made. The court's discovery orders addressed the disclosure of
18 experts and Fed. R. Evid. 404(b) materials and there appears to have
19 been compliance with those orders well prior to the commencement of
20 trial. Finally, at the hearing on this motion, counsel for the
21 government represented in response to the court's inquiry that
22 discovery has been provided to the defense with respect to every
23 racketeering act or unlawful act in furtherance of the alleged
24 racketeering conspiracy which the government intends to prove at
25 trial.

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THE MOTION FOR A BILL OF PARTICULARS

Through this motion defendants seek a bill of particulars addressing seventeen separately identified matters including the definition of "a member or associate" of the Pitch Dark Family, identification of when each defendant became a member or associate of the Pitch Dark Family and how that occurred and the specific territory allegedly controlled by the Pitch Dark Family. In addition, with respect to the racketeering activity and the racketeering conspiracy alleged in the indictment, defendants seek particulars with respect to specific acts (whether charged or uncharged) including the times, dates and places of any such acts, uncharged co-conspirators, identification of witnesses and identification of each defendant's specific role in each act the government intends to prove at trial. Defendants argue that the requested bill of particulars is necessary to enable them to prepare their defense, to avoid prejudicial surprise at trial and to allow them to plead their acquittal or conviction in this case as a bar to any future prosecution if appropriate.

The government opposes the motion, arguing that the information sought by the defendants has been provided to them in sufficient detail by the indictment itself and in the extensive discovery turned over to the defense to date. The government notes that such discovery far exceeds that required by Rule 16 and includes full disclosure grand jury testimony. In this way, the government contends, the defendants have been informed of the nature of the charges with sufficient precision. In its opposition the government

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1 has further explained how the indictment and the discovery provided to
2 the defense sets out the information sought by the defense inquiries.

3 The court agrees that the indictment and the discovery
4 provided to date as represented by the government obviates the need
5 for a bill of particulars.

6 Rule 7(c) (1) of the Federal Rules of Criminal Procedure
7 states, in part, that the indictment "shall be a plain, concise and
8 definite written statement of the essential facts constituting the
9 offense charged." Rule 7(f) provides that the "court may direct the
10 filing of a bill of particulars." The purpose of a bill of
11 particulars is to inform the defendant of the nature of the charges
12 against him or her with sufficient precision to enable the defendant
13 to prepare for trial, to avoid or minimize the danger of surprise at
14 the time of trial and to protect against double jeopardy should the
15 defendant be prosecuted a second time for the same offense. United
16 States v. Ayers, 924 F.2d 1468, 1483 (9th Cir. 1991); United States v.
17 Mitchell, 744 F.2d 701, 705 (9th Cir. 1984); United States v. Giese,
18 597 F.2d 1170, 1180 (9th Cir. 1979).

19 Federal trial courts have broad discretion in determining
20 whether or not to grant a motion for bill of particulars. See Will v.
21 United States, 389 U.S. 90, 98 (1967); United States v. Walsh, 194
22 F.3d 37, 47 (2d Cir. 1999); see also United States v. Calabrese, 825
23 F.2d 1342, 1347 (9th Cir. 1987) (abuse of discretion standard on
24 appeal). In exercising its discretion the court should consider the
25 totality of the information available to the defendants through the
26 indictment, affirmations and pretrial discovery and determine whether,

1 in light of the charges the defendants must answer, the filing of a
2 bill of particulars is warranted. United States v. Reddy, 190 F.
3 Supp. 2d 558, 565 (S.D.N.Y. 2002); United States v. Santiago, 174 F.
4 Supp. 2d 16, 34 (S.D.N.Y. 2001) (court should also consider the
5 complexity of the offenses charged and the clarity of the indictment).

6 In striking a proper balance between the legitimate interest
7 of the government and those of the defendants the court must keep in
8 mind that a bill of particulars is not a discovery tool or a device to
9 allow the defense to preview the government's evidence. United States
10 v. Fletcher, 74 F.3d 49, 52 (4th Cir. 1996); United States v. Ramirez,
11 54 F. Supp. 2d 25, 29 (D.D.C. 1999); see also Santiago, 174 F. Supp.
12 2d at 34. Nor is it to be used to discover the witnesses the
13 government intends to call at trial. United States v. DiCesare, 765
14 F.2d 890, 897-98 (9th Cir.), amended on other grounds, 777 F.2d 543
15 (1985). Rather, "[a] defendant is not entitled to know all the
16 evidence the government intends to produce, but only the theory of the
17 government's case." Govt. Opp'n at 8-9 (quoting Giese, 597 F.2d at
18 1181); see also United States v. Ryland, 806 F.2d 941, 942 (9th Cir.
19 1986); United States v. Middleton, 35 F. Supp. 2d 1189, 1192 (N.D.
20 Cal. 1999) ("the goal of a bill of particulars is satisfied if the
21 defendant is aware of the 'theory of the government's case'").

22 It has also been recognized, however, that the government
23 cannot rely on "mountains of documents" provided in discovery if the
24 defense is still left unguided as to the nature of the charges and
25 that large volumes of discovery sometimes necessitates a bill of
26 particulars. Reddy, 190 F. Supp. 2d at 566 (quoting United States v.

1 Bortnovsky, 820 F.2d 572, 575 (2d Cir. 1987)). This is particularly
2 true in cases charging criminal offenses under broad statutes such as
3 RICO, as is the case here. United States v. Davidoff, 845 F.2d 1151,
4 1154 (2d Cir. 1988); Bortnovsky, 820 F.2d at 575. Nonetheless,
5 because it confines the government's case to the particulars
6 furnished, a bill of particulars should not be granted that would
7 unduly restrict the government's ability to present its case. United
8 States v. Gibson, 175 F. Supp. 2d 532, 536 (S.D.N.Y. 2001) (citing
9 United States v. Perez, 940 F. Supp. 540, 550 (S.D.N.Y. 1996)).
10 Finally, "[t]he decisive inquiry in deciding such a motion is whether
11 the indictment adequately advises 'the defendant of the specific acts
12 of which he is accused.'" Santiago, 174 F. Supp. 2d at 34 (quoting
13 United States v. Torres, 901 F.2d 205, 234 (2d Cir. 1990)). See also
14 Davidoff, 845 F.2d at 1154-55.

15 Applying these standards, below the court will address the
16 defendants' specific requests.

17 Requests 1A-D: Pitch Dark Family Particulars

18 The defendants seek a bill of particulars defining the terms
19 "member" and "associate" with respect to the Pitch Dark Family as well
20 as whether they are allegedly members or associates of the Pitch Dark
21 Family and, if so, when and how they became a member or associate.

22 The indictment alleges that all of the named defendants were
23 "members and associates of the Pitch Dark Family (PDF), a criminal
24 organization whose members and associates engaged in acts of violence,
25 including murder, attempted murder, and narcotics distribution . . .
26 ." (Indictment at 2.) The terms "members and associates" are not so

1 vague as to require further definition in order for the defendants to
2 be adequately advised of the nature of the charges against them.
3 Moreover, the indictment alleges that the defendants beginning at a
4 time "no later than on or about January 1, 1994 through on or about
5 July 30, 2000," engaged in the conduct of the affairs of the Pitch
6 Dark Family through a series of specifically alleged racketeering
7 acts. (Indictment at 2-8.) Along with the extensive discovery
8 provided to the defense outlining the criminal activities of the Pitch
9 Dark Family and of these defendants specifically, no more
10 particularity is required. See DiCesare, 765 F.2d at 897 (government
11 need not identify the date on which a conspiracy began by way of a
12 bill of particulars); United States v. Shabazz, 995 F. Supp. 1109,
13 1115 (D. Or. 1998).

14 Requests 1E and H: Other Members of the Criminal Enterprise or
15 Unnamed Co-conspirators

16 This is essentially a request for identification of
17 unindicted co-conspirators. Under the circumstances presented in this
18 case as set forth above, a bill of particulars listing un-indicted co-
19 conspirators is not warranted. See United States v. DiCesare, 765
20 F.2d at 897 (request for names of unindicted co-conspirators did not
21 warrant a bill of particulars); United States v. Shabazz, 995 F. Supp.
22 at 1115.

23 Requests 1F, 1H and 2F: Other Racketeering or Other Acts

24 At the hearing on the motion counsel for the government
25 represented that through discovery and/or Fed. R. Evid. 404(b)
26 materials already provided, the defendants have received discovery

1 material with respect to each unlawful act that the government will
2 attempt to prove at trial. Given this representation and in light of
3 the clarity of the indictment as well as the broad and extensive
4 discovery provided to the defense, no further particularity is
5 required. The information provided to the defendants apprises them of
6 the charges with sufficient precision to enable them to prepare their
7 defense and avoid unfair surprise at trial.

8 Request 1G: The Pitch Dark Family Turf

9 The defendants have long argued that the government should
10 be required to state with particularity where the Pitch Dark Family
11 operated and what specific turf the PDF protected through
12 intimidation, violence, assaults and murder. The government continues
13 to argue that in grand jury testimony long-ago provided to the
14 defense, various witnesses have identified the turf of the Pitch Dark
15 Family on the West Side of Vallejo. Thus, the defendants have grand
16 jury testimony in which witnesses have testified in varying degrees of
17 specificity as to the "heart" of the PDF turf, areas controlled by
18 PDF, and specific intersections where PDF sold drugs or where their
19 graffiti appeared. The government suggests that no more detailed
20 identification of the PDF's territory is feasible.

21 The court agrees. Through discovery the defendants have
22 been provided sufficient specificity in this regard.

23 Requests 2A-E: Particulars of the Charged Racketeering Conspiracy

24 Here, the defendants seek the time, date, places and acts
25 through which they joined the racketeering conspiracy and completed
26 their participation therein, the acts they performed and the witnesses

1 present and whether they participated in the conspiracy while
2 incarcerated.

3 Again, much of this information has been provided to the
4 defense within the voluminous discovery produced by the government.
5 Moreover, these requests seek information more akin to evidentiary
6 details not properly the subject of a bill of particulars. See United
7 States v. Mitlof, 165 F. Supp. 2d 558, 569 (S.D.N.Y. 2001); United
8 States v. Jimenez, 824 F. Supp. 351, 363 (S.D.N.Y. 1993) (motions for
9 "whens," "wheres," and "with whoms" regarding a conspiracy are
10 routinely denied).

11 Request 3A and B: Roles and Identities of Those Participating In
12 Violent Crimes in Aid of Racketeering Charged in Counts Three and Four

13 In Count Three defendant White is charged with the murder of
14 Devin Russell, along with four other named defendants, as a violent
15 crime in aid of racketeering activity. In Count Four defendant Greer
16 is charged with the murder of Larry Cayton, as a violent crime in aid
17 of racketeering activity. The defendants seek a bill of particulars
18 informing them of their specific role in the murder in question and
19 identifying other persons involved in those murders.

20 The government opposes the motion on the ground that the
21 discovery provided to the defense to date obviates any need for a bill
22 of particulars. In this regard, the government notes that the
23 discovery already produced reveals that according to witnesses,
24 Charles White shot Devin Russell with a shotgun handed to him by Oscar
25 Gonzales. With respect to Cayton, the government has outlined the
26 specific information provided in discovery regarding defendant Greer's

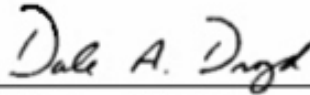
1 role in that murder. That discovery has included tape recorded
2 statements, witness testimony, police and autopsy reports, the
3 investigating officer's notes and information regarding Greer's motive
4 for the killing. Once again, the complete discovery provided to the
5 defense in this case obviates the need for a bill of particulars. See
6 Giese, 597 F.2d at 1180.

7 CONCLUSION

8 For the reasons set forth above, the defendants' motion for
9 a bill of particulars is denied.

10 IT IS SO ORDERED.

11 DATED: October 17, 2005.

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13 DALE A. DROZD
14 UNITED STATES MAGISTRATE JUDGE

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